Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-3160

Appeal MA13-292

Windsor Police Services Board

February 12, 2015

Summary: The appellant made a request for records relating to two provincial offence tickets issued to him in 2004. Specifically, he sought access to police officer notes relating to the incidents. In this order, the adjudicator finds that the police conducted a reasonable search, given that the records were subject to records retention policies that mandated their destruction in 2010 or 2011. The fact that the appellant may have obtained access to the identical records as a result of an earlier request does not demonstrate that they would not have been destroyed in accordance with the records retention policies in effect.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section (17).

OVERVIEW:

[1] The Windsor Police Services Board (the police) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

> Requesting all reports and officer notes, occurrences dating back to from 1976 to 2013.

[2] The police issued a decision to the appellant providing partial access to all of the reports which they have on file about him. The police denied access to certain

information in the records pursuant to the discretionary personal privacy exemption in section 38(b) of the *Act.* The appellant appealed the decision.

[3] During the mediation stage of the appeal, the police issued several supplementary decisions to the appellant advising that in addition to section 38(b), they intended to rely on the discretionary law enforcement exemptions in sections 8(1)(e) and 8(1)(g), as well as section 9(1)(d) (relations with other governments) of the *Act* with respect to those records originally identified, as well as additional records located as a result of further searches being conducted.

[4] During discussions with the mediator, the appellant advised that he did not wish to pursue access to the information for which the police had claimed the application of sections 8(1)(e), 8(1)(g), 9(1)(d) and 38(b) of the *Act.* As a result, those sections and records, or portions of records, are no longer at issue in the appeal.

[5] The appellant advised the mediator that he is specifically seeking access to any police officers' notebook entries relating to certain identified incidents for which no records were located. The mediator, the appellant and the police subsequently had a number of discussions and exchanged various e-mails with a view to clarifying and narrowing the request. As a result of these discussions, the appellant narrowed his request to include only police officer notebook entries relating to two specific occurrence reports and two tickets.

[6] After conducting a second search, the police issued a supplementary decision to the appellant disclosing one additional report which contained the identical information to that contained in another report which was provided as part of the original decision letter. The police also located and reviewed police officers' notes relating to the two occurrence reports and two tickets and provided partial access to two notebook entries, denying access to some information pursuant to section 38(b) of the *Act.* The police confirmed that there are no additional records relating to these incidents.

[7] The police also provided the appellant access to his *Person Hardcopy*, explaining that this is a list of all contact that has occurred between the appellant and the police. The police confirmed that access had been provided to all occurrence reports and tickets listed on the *Person Hardcopy* and as a result, no further occurrence reports were found during their second search. The police also clarified that they do not hold records from prior to December of 2002, with the exception of those relating to more serious offences, and that the incidents described by the appellant would not be classified as serious offences.

[8] After receiving the police's supplementary decision, the appellant did not take issue with their decision to withhold certain information from the newly located records pursuant to section 38(b) of the *Act.* As a result, those records are not at issue in the appeal. However, the appellant advised the mediator that there were some errors in the

description of the incidents contained in the decision letter. The mediator relayed this information to the police, who in an effort to resolve the appeal, reissued the decision correcting the information in accordance with the appellant's clarification. The appellant subsequently advised the mediator that there continue to be errors in the description of the incidents in question. The appellant also continues to take the position that further occurrence reports responsive to his request should exist. As a result, the reasonableness of the police's search remains at issue in this appeal.

[9] Because no further mediation was possible, the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by seeking the representations of the appellant. I received representations from him, a complete copy of which was then shared with the police, who also provided me with detailed representations.

[10] I decided to seek reply representations from the appellant in May 2014 and over the next nine months, sent the appellant a total of three copies of a reply Notice of Inquiry, along with three complete copies of the representations of the police. The appellant undertook to representatives of this office that he would provide me with reply representations on at least eight occasions but has not, to date, done so.

[11] In this order, I uphold the police's search for responsive records and find that their efforts to locate all of the information sought by the appellant were reasonable.

DISCUSSION:

[12] The sole issue to be determined in this appeal is whether the police conducted a reasonable search for records responsive to the request, as narrowed by the appellant.

[13] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[1] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches. The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[2] To be responsive, a record must be "reasonably related" to the request.[3]

[14] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which

[1] Orders P-85, P-221 and PO-1954-I.
[2] Orders P-624 and PO-2559.
[3] Order PO-2554.

are reasonably related to the request.[4] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[5]

[15] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[6]

Representations of the parties

[16] In his initial representations, the appellant states that he is seeking a specified police officer's notes or other documentation which might record what that officer's "assignment" was on June 16, 2004. In addition, the appellant identified another occurrence that took place on May 28, 2004 involving five police officers. The appellant seeks access to the notebook entries of all five involved officers. The appellant also suggests that additional records beyond those provided to him as a result of this request ought to exist because they had been provided to him some years before. He indicates that his copies of these records were destroyed in a flood.

[17] In response, the police provided me with representations prepared by its Privacy Coordinator who is an experienced records management professional which describe in detail the record-keeping policies of the police, particularly with respect to records relating to two 2004 Provincial Offence Act Notices (POA Notices) issued against him. The police indicate that according to its records retention schedules, POA Notices are maintained for the current year plus five years so that Notices relating to offences that occurred in 2004 were destroyed in 2010. In addition, it has provided evidence that any records relating to POA Notices issued in 2004 and 2005 were disposed of in 2010 or 2011.

[18] The police submit that the appellant may have received access to the additional records he is seeking from the 2004 occurrences prior to their destruction in 2010 or 2011. The police state that these records are no longer available as they were disposed of in accordance with their records retention schedules.

Analysis and findings

[19] Based on the representations of the police, three copies of which were provided to the appellant, I am satisfied that they conducted a reasonable search for records responsive to the request. The appellant was granted access to those police officer notebooks which relate to the May and June 2004 occurrences in which he was involved. The other officer involved in the event in June 2004 did not make any entries

[4] Orders M-909, PO-2469 and PO-2592.
[5] Order MO-2185.
[6] Order MO-2246.

in his notebook regarding the incident, which is not surprising considering it involved a traffic ticket issue under the *Provincial Offences Act*. I accept the police's evidence that any other records relating to these two incidents were destroyed in accordance with the records retention policies which govern the treatment and maintenance of their record-holdings.

[20] In the absence of any evidence from the appellant responding to the submissions made by the police, I find that the police have provided me with sufficient information to enable me to conclude that they conducted a reasonable search for records responsive to the appellant's request, as narrowed. Accordingly, I dismiss the appeal on the basis that the search was in accordance with the police obligations under the *Act*.

ORDER:

I dismiss the appeal.

Original signed by: February 12, 2015
Donald Hale
Adjudicator